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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/723,508	11/28/2000	Glen T. Anderson	sc37u-us	4904

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EXAMINER

YU, GINA C

ART UNIT PAPER NUMBER

1617

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/723,508

Applicant(s)

ANDERSON, GLEN T.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-13, 15-22, 24, 25 and 30-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-13, 15-22, 24, 25 and 30-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 8, 2004 has been entered.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 7-13, 15-20, 22, 24, 25, and 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rouquet et al. (US 6258345 B1) in view of Manufacturing Chemist (Black Helps Hide Lines, June 1, 1999) and Anselmann (SPC Soap, Perfumery, and Cosmetics).**

Rouquet et al. describe a topical composition comprising crosslinked elastomeric organopolysiloxane and spherical organic polymeric particles with a particle diameter of less than 10 microns in a liquid fatty phase. See abstract. The reference teaches using the elastomeric organopolysiloxane and the spherical particles in the amount of 2-20 % of the total weight of the composition. See col. 3, lines 46 – 58; instant claims 11-13. Claim 16 is met by the disclosure of the additional ingredients in col. 5, lines 15 – 38. The vehicles of the composition in claim 17 and the method of using the invention

in claims 18-20 are described in Examples. The reference teaches formulating the invention in the form of emulsion and creams. See col. 3, lines 58 – 67.

The reference also fails to teach the inorganic spherical particles recited in Claim 7.

Manufacturing Chemist teaches that Ronasphere LDP from Merck, a cosmetic filler pigment comprising sphere silica coated with titanium dioxide and iron oxide, provides optical reduction of fine lines and the effect of making the skin appear smoother, more even and more natural looking. See Full Text. The particle size of the Ronasphere LDP pigments are less than 25 microns, and particle distribution of 4-7 microns. See Merck technical data.

Anselmann teaches that Ronasphere LDP can be used in the amount of 1-10 % in a cosmetic formulation. See p. 4, last par.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Rouquet by incorporating the spherical silica as motivated by Manufacturing Chemist and Anselmann because the latter teaches that the spherical silica Ronasphere LDP provides optical reduction of fine lines and the effect of making the skin appear smooth, more even and natural looking. The skilled artisan would have had a reasonable expectation of successfully producing a cosmetic composition which provide wrinkle coverage because both Rouquet and Manufacturing Chemist teach emulsion cosmetic compositions.

**Claims 7-13, 15-22, 24, 25, and 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rouquet et al. (US 6258345 B1) in view of LaFleur et al. (US 5658579) ("LaFleur").**

Rouquet et al. describe a topical composition comprising crosslinked elastomeric organopolysiloxane and spherical polymeric particles with a particle diameter of less than 10 microns in a liquid fatty phase. See abstract. Employing each of the elastomeric organopolysiloxane and the spherical particles in the amount of 2-20 % of the total weight of the composition, is disclosed in col. 3, lines 46 – 58, which meets instant claims 11-13. Claim 16 is met by the disclosure of the additional ingredients in col. 5, lines 15 – 38. The vehicles of the composition in claim 17 and the method of using the invention in claims 18-20 are described in Examples.

Rouquet fails to teach the inorganic spherical particles recited in Claim 7.

LaFleur teaches powder compositions comprising combination of talc having specified particle size distribution. See col. 2, lines 10 – 34. The reference teaches that the talc therein comprises particles having a particle size distribution of 10 microns or less; 15 microns or less; and 20 microns or less. See instant claims 3-5, 9, 10, 24-28. The reference teaches that the invention provides improved coverage, uniformity, and natural look, which are attributed by the particle size distribution of talc. See col. 3, lines 1 – 64. As for claims 1 and 7, examiner takes the position that the prior art renders the claimed particle size distribution of 24 obvious. Based on the prior art teaching that a particle size distribution of 20 microns or less renders the said benefits, it would have been obvious to a routineer to discover a workable particle size distribution by routine

experimentation. While the reference teaches using talc of different size distribution, the reference teaches, "some of the more frequently used components include from about 1 % to about 10 % fillers and powders other than talc, including. . . treated and untreated mica . . . and silica". See col. 6, lines 26 – 34. Thus, the functional equivalency of talc with mica or silica is suggested. Examiner views that substituting prior art talc with mica pigments having different size distribution would have been obvious to one of ordinary skill in the art because the skilled artisan would have had a reasonable expectation that mica would be a functional equivalent to talc.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Rouquet by adding mica pigments with different size distribution as motivated by LaFleur because of the expectation of successfully producing cosmetic compositions that provide improved coverage, uniformity, and natural look to the skin.

### ***Response to Arguments***

Applicant's arguments filed December 8, 2004 have been fully considered but they are moot in view of the new grounds of rejections. .

### ***Conclusion***

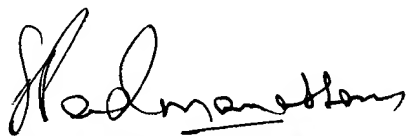
No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-0635. The examiner can normally be reached on Monday through Friday, from 8:30 AM until 6:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina Yu  
Patent Examiner



**SREENI PADMANABHAN**  
**SUPERVISORY PATENT EXAMINER**